

FOIA EXEMPTION STAYS; PANELS MOLD OTHER PARTS OF NEW DEPARTMENT

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The White House scored a significant victory late Thursday night when the House Government Reform Committee rejected, by an 11-22 vote, a Democratic amendment to the Cabinet-level homeland security bill that would have removed language creating a new exemption to the Freedom of Information Act.

The committee approved the bill, 30-2, with Reps. Dennis Kucinich (D-Ohio) and Patsy Mink (D-Hawaii) in opposition.

Rep. Janice Schakowsky (D-Ill.) brought forward the FOIA amendment at the tail end of a marathon markup. Her language would have stripped from the Bush administration proposal, H.R. 5005, and the chairman's mark from Rep. Dan Burton (R-Ind.), a section that allows any nongovernment entity to submit critical infrastructure materials to the government without fear of their disclosure. Schakowsky argued that the FOIA exemption could trickle down to affect a range of other materials, including environmental information that is currently required under law to be disclosed. The exemption's supporters, however, said the language is narrow in its scope and solely aimed at encouraging better homeland security communication between industry and government officials.

Senate Democrats are not expected to include the administration's FOIA exemption in their proposal.

In addition, the Government Reform Committee accepted by voice vote an amendment from Rep. Thomas Davis (R-Va.) that gives the nongovernment information providers -- including the electric, chemical and water utility industries -- a safe harbor from future liability and anti-trust suits. Concerned that

additional lobbying materials would be included in the exemption, Rep. Henry Waxman (D-Calif.) added a last-minute amendment calling for no such information to be submitted. Davis has proposed identical language through his bill, H.R. 2435, for more than a year (Environment & Energy Daily, Oct. 9).

Lawmakers in the Government Reform panel also accepted by voice vote an amendment from Kucinich that would provide legal and salary whistle-blower protections to employees of the new Homeland Security Department. Kucinich, among others, contended that H.R. 5005 offered no such assurances.

At the start of the markup, Burton said his panel had the most important task out of all the other House committees handling portions of the homeland security legislation. "This is not part of the issue," he said. "It's the whole issue."

No doubt, Thursday was one of the busiest days so far on Capitol Hill with regard to homeland security. In all, five panels marked up H.R. 5005 in order to complete their work by Friday and hand in their recommendations to the newly created Select Committee on Homeland Security, chaired by Majority Leader Richard Armey (R-Texas.). Armey has recently said that the committees' work is nonbinding and he could take any or all of their suggestions or head in his own direction.

House Minority Leader Richard Gephardt (D-Mo.) said he was concerned by Armey's statements and warned of a potentially partisan floor fight over H.R. 5005. "I hope [Armey] doesn't throw all of them in the trash can and then just put the Bush bill on the floor," Gephardt said. "If that's what happens, why did we sent it to the committees? We wasted our time."

Armey's committee held its first hearing Thursday, with four top members of the Bush administration Cabinet -- Attorney General John Ashcroft, Defense Secretary Donald Rumsfeld, Treasury Secretary Paul O'Neill and Secretary of State Colin Powell -- urging the panel to not let jurisdictional battles get in the way of creating the new department. During opening statements, Armey said he did not want to address the details of the homeland security legislation until the committees had finished their work.

The Senate Governmental Affairs Committee is aiming to hold a markup in the next two weeks on the upper chamber's committee recommendations. Serving as the legislative vehicle is

S. 2452, a bill from Committee Chairman Joe Lieberman (D-Conn.) that advanced in mid-May out of his panel along party lines. House and Senate floor action on their respective homeland security bills are expected during the week of July 22.

COMMITTEE APPROVES CYBERSECURITY COMPONENTS

The House Energy and Commerce Committee, meanwhile, approved by voice vote a slight rewrite of the health and computer infrastructure components of H.R. 5005. Chairman Billy Tauzin (R-La.) said his manager's mark would expand the primary functions of the new undersecretary for Information Analysis and Infrastructure Protection -- as called for by the White House -- through the establishment of a federal cybersecurity program. The new office would serve as a resource to other federal agencies to help each identify and correct weaknesses in their critical computer infrastructure, Tauzin said.

Tauzin said his mark also ensures that the Department of Health and Human Services would maintain primary responsibility over human health-related research while collaborating with the new homeland security office on issues related to counterterrorism. The new Homeland Security Department secretary receives additional authority under the Tauzin mark by calling for the development of a national strategy for bioterrorism research.

The chairman's mark also includes language to ensure that the legislation does not create new regulatory authority or override existing regulatory authority of other agencies unless it is specifically transferred to the new department. Committee ranking member John Dingell (D-Mich.) said he was satisfied with the mark, citing both the Nuclear Regulatory Commission and the Environmental Protection Agency as government entities that he would be watching closely.

Elsewhere, an amendment related to nuclear security, in particular radioactive "dirty bombs," from Rep. Edward Markey (D-Mass.) was deemed nongermane by Tauzin. Markey then appealed the chairman's decision, a move that was tabled by Rep. Christopher Cox (R-Calif.). Markey sought a roll-call vote on the table, losing 37-7. At issue in the Markey language was the creation of a special task force on sealed source protection that would have included NRC, FBI, CIA, Justice, State, Defense and Energy departments and the Federal Emergency Management

Agency. At its core, the group would file a report to Congress and the president on sealed-source vulnerabilities, recovery of lost and stolen goods, a national tracking system and the consideration of alternative technologies.

Anticipating another parliamentarian block, Markey proposed and then withdrew an amendment that would have called on the private sector to pay at least 50 percent of the costs to comply with federal requirements on new security measures at all of the nation's privately owned critical infrastructure. Tauzin said he agreed with Markey that the issue was a pertinent one but that he'd rather bring it before the Select Committee later this month without having it attached to his chairman mark.

PANEL BACKS KEEPING COAST GUARD, FEMA OUT OF NEW DEPARTMENT

In a major blow to the White House's proposal, the Transportation and Infrastructure Committee in bipartisan fashion rejected a Bush plan to shift the Coast Guard, FEMA and the new Transportation Safety Administration into the Homeland Security Department.

The manager's amendment, from Chairman Don Young (R-Alaska), was accepted by voice vote and calls on the Coast Guard to stay under the Transportation Department. The mark also creates a new undersecretary with duties specific to homeland security and calls on the Coast Guard to conduct its core missions -- including oil spill response and recovery and fishery enforcement -- at the "adequate levels as envisioned by Congress."

The Government Reform Committee, however, may have monkeywrenched the Transportation and Infrastructure Committee's recommendation on the Coast Guard late Thursday when the former panel rejected a similar amendment by a 16-19 vote. Reps. John Mica (R-Fla.) and John Tierney (D-Mass.) sponsored the Government Reform Committee language but were overpowered during the vote by panel Republicans who argued to stay with the White House's proposal.

Back in the Transportation and Infrastructure panel, Young's mark also made a jurisdictional statement over the Highway Trust Fund and other transportation trust funds through language prohibiting their transfer to the Homeland Security Department. Young said he included the language after

determining that H.R. 5005 provides broad authority to transfer funds from agencies that would be headed to the new department without going through appropriations committees. Another Young amendment calls on the Homeland Security Department to adhere to the Administrative Procedure Act upon the adoption of any new regulations.

Steve Hansen, a Young spokesman, said the Transportation and Infrastructure Committee would be watching the Select Committee closely to ensure their language remains intact despite the White House's previously stated position. If changed, Hansen said the 75 members of the transportation panel would seek other lawmakers' support in asking the Rules Committee for an open rule and an opportunity to modify the language on the House floor. Young would also consider a campaign to kill a closed rule should the Rules Committee send the bill to the floor in such a form, Hansen said.